

## FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

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The Committee solicits comment on the following proposal by April 15, 2018. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

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### PROPOSED

#### [AMENDED] M Civ JI 30.01 Professional Negligence/Malpractice

~~When I use the words “professional”~~ “Professional” negligence” ~~or and~~ “malpractice” ~~with respect to the defendant’s conduct are the same.~~ ↓ They mean the failure to do something which that a [ name profession ] of ordinary learning, judgment or and skill in [ this community or a similar one / [ name particular specialty ] ] would do, under the same or similar circumstances as in this case. Professional negligence, or malpractice, can also mean doing something or the doing of something which that a [ name profession / name particular specialty ] of ordinary learning, judgment or and skill would not do, under the same or similar circumstances you find to exist in as in this case.

It is for you to decide, based upon the evidence, what the ordinary [ name profession / name particular specialty ] of ordinary learning, judgment or and skill would do or would not do under the same or similar circumstances.

#### Note on Use

There is case law support for the applicability of the malpractice instructions to the professionals noted: *Siirila v Barrios*, 398 Mich 576; 248 NW2d 171 (1976) (doctor); *Roberts v Young*, 369 Mich 133; 119 NW2d 627 (1963) (doctor); *Babbitt v Bumpus*, 73 Mich 331; 41 NW 417 (1889) (attorney); *Eggleston v Boardman*, 37 Mich 14 (1877) (attorney); *Tasse v Kaufman*, 54 Mich App 595; 221 NW2d 470 (1974) (dentist); *Ambassador Baptist Church v Seabreeze Heating & Cooling Co*, 28 Mich App 424; 184 NW2d 568 (1970) (architect); *Tschirhart v Pethel*, 61 Mich App 581; 233 NW2d 93 (1975) (chiropractor).

Standards for liability of a certified public accountant are set forth in MCL 600.2962, added by 1995 PA 249.

If the defendant is a specialist, the name of that specialty should be stated where that option is given instead of the name of the defendant’s profession.

## Comment

The language in the instruction is supported by numerous cases, including *Roberts*; *Johnson v Borland*, 317 Mich 225; 26 NW2d 755 (1947); *Siirila*; *Fortner v Koch*, 272 Mich 273; 261 NW 762 (1935); *Tasse*. MCL 600.2912a.

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The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

**Chair:** Hon. Mark T. Boonstra  
**Reporter:** Timothy J. Raubinger  
**Members:** Benjamin J. Aloia; Robert L. Avers; Hon. Jane M. Beckering; Mark R. Bendure; Hon. Kathleen A. Feeney; Gary N. Felty, Jr.; William B. Forrest, III; Donald J. Gasiorek; James F. Hewson; Hon. Michael L. Jaconette; Amy M. Johnston; C. Thomas Ludden; Daniel J. McCarthy; Daniel J. Schulte; Hon. Douglas B. Shapiro; Judith A. Susskind; Hon. Donald A. Teeple; Thomas Van Dusen; Hon. Michael D. Warren, Jr.; Thomas W. Waun.